

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>McDONALD'S CORPORATION</b>	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-001S

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### **DECISION AND ORDER**

On October 1, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of McDonald's Corporation for variances to erect two signs. Sign A is a 9'11"(H) x 10'0" (W), 99.2-sq. ft. freestanding identification sign "0" (Zero) feet from the Route 175 right-of-way and 40' in height rather than the 99' setback required in relation to the total sign area and the 26' setback required in relation to the sign height. Sign B is a 3'0"(H) x 8'0" (W), 24-square foot, freestanding identification sign "0" (Zero) feet from the Route 175 right-of-way and 13' in height rather than the 24' setback required in relation to the total sign area and the 26' setback required in relation to the sign height. Both signs would be located in an M-2 (Manufacturing: Heavy) Zoning District and the petition was filed in accordance with Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to complying with the notice, advertising, and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. No one appeared in opposition to the petition. At the outset of the proceeding, Mr. Meachum stated that the

Petitioner agreed with the Technical Staff Report and would present no additional testimony or evidence.

### FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 6<sup>th</sup> Election District on the north side of Pocomoke Avenue at its intersection with MD 175 (Waterloo Road). It is referenced as Tax Map 43, Grid 15, Parcel 652, Lot A-4 and is also known as 7878 Pocomoke Avenue (the "Property").

2. The M-2 zoned, generally trapezoid shaped Property is 1.22 acres in size. It has about 135 feet of frontage on Pocomoke Avenue and about 265 feet of frontage on MD 175. The Site is lower in elevation than the MD 175 roadbed, which creates a steep embankment along the MD 175 frontage.

3. Vicinal Properties. Parcel 652 to the north is B-2 zoned and is improved with the redeveloped Columbia Marketplace retail facility. The other surrounding properties are zoned M-2. To the west, Parcel 652/A-2 is improved with a banking facility. The Greater Baltimore Consolidated Wholesale Food Market lies beyond the bank, across Assateague Road. Across MD 175, Parcels 543, 660 and 545 are the site of the Maryland House of Corrections. To the east is a CITGO gasoline service station.

4. Roads. MD 175 has two travel lanes in each direction divided by a concrete median and right and left-hand turn channels within a 150- foot right-of-way. The Pocomoke Avenue/MD 175 intersection is signalized. Access to Pocomoke Avenue, an

internal street, is gained from a right turn only lane from eastbound MD 175. The posted speed limit on MD 175 is 40 MPH and 25 MPH on Pocomoke Avenue.

5. Water and Sewer. The Property is served by public water and sewer facilities.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as an "Employment Area/Redevelopment Corridor." Transportation Map 2000-2020 of the 2000 General Plan depicts MD 175 as a Minor Arterial and Pocomoke Avenue as a local road.

7. Zoning History. In BA Case No. 08-008C&V, the Hearing Examiner approved the Petitioner's petition for a conditional use to raze the existing fast food restaurant and construct a new one and for a variance to reduce the 30-foot setback for parking from an external public street right-of-way to 12.55 feet. In conjunction with this petition, the State Highway Administration approved a 20- foot wide, right-turn access lane from MD 175 in the Property's northeast corner. As redeveloped, the restaurant will lie several feet lower than the MD 175 roadbed.

8. The Requested Sign Variances. To support the redevelopment, the Petitioner is now seeking two sign variances. Sign A, as described above, would be sited on the northeast side of the Property, zero feet from the MD 175 right-of-way. Sign B, as described above, would be placed below Sign A. Both signs would identify the business as a McDonald's restaurant.

9. A line of deciduous trees runs along the north and west side of the Property and a line of large utility poles run along the west side. The banking facility blocks motorists' view of the Property when traveling north on Pocomoke Avenue and the

CITGO building blocks motorists' view of the Property when traveling west on Route 175. Importantly, numerous tractor/trailer vehicles persistently park or stop long-term at the intersection of MD 175 and Pocomoke Avenue.

### CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

**That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.**

The Site has frontage at along Route 175, which has a dependency on nonlocal use. This condition leads to practical difficulty and unnecessary hardship in complying strictly with the setback requirements of the Sign Code, in accordance with Section 3.513(b)(1).

**Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.**

The grade change between the Route 175 roadbed and the restaurant and the location of nearby buildings impede motorists' ability to see a conforming sign in a safe manner, causing practical difficulties and unnecessary hardship in complying with this

subtitle. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

**Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.**

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

**4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.**

There is no evidence of adverse effects from the proposed signs on the use of adjacent properties, or any evidence of a dangerous traffic condition resulting from the proposed signs. I conclude the proposed sign is unlikely to produce adverse effects on the use or development of adjacent properties.

**That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.**

The proposed signs are a reasonable use and the minimum necessary to comply with the restaurant's signage requirements. I therefore conclude the signs are the minimum necessary to afford relief and can be granted without substantial impairment of the intent, purpose and integrity of the Sign Code, in accordance with Section 3.513(b)(5).

**That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulties are a result of unique Property conditions, vicinal obstructions, and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

**ORDER**

Based upon the foregoing, it is this 12<sup>th</sup> day October 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of McDonald's Corporation for variances to erect Sign A, a 9'11"(H) x 10'0" (W), 99.2-sq. ft. freestanding identification sign "0" (Zero) feet from the Route 175 right-of-way and 40' in height rather than the 99' setback required in relation to the total sign area and the 26' setback required in relation to the sign height, and Sign B, a 3'0"(H) x 8'0" (W), 24-square foot, freestanding identification sign "0" (Zero) feet from the Route 175 right-of-way and 13' in height rather than the 24' setback required in relation to the total sign area and the 26' setback required in relation to the sign height, in an M-2 (Manufacturing: Heavy) Zoning District.  
are hereby **GRANTED**;

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The signs shall not be erected, altered, or relocated without a sign permit issued by the Department of Inspections, Licenses, and Permits, in accordance with Section 3.509 of the Howard County Sign Code.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER

MICHELE L. LEFAIVRE

Michele L. LeFaivre

Date Mailed: 10/15/09

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.